should give security for costs before his application is dealt with on the ground that the applicant is resident in India, where he has in fact been for some years, and that he has no property or assets in Malaya. The respondent has also affirmed in his affidavit that judgments of Malayan courts have not been satisfied, nor has an order for security of costs been complied with and he has asked the court to take these circumstances into consideration. I think it is proper that we do so.

It was urged on behalf of the applicant that owing to stringent currency restrictions in India any order requiring him to furnish security for costs would result in further delay as it would inevitably take time to arrange for the transfer of money to this country.

It is quite clear that the court has a discretion in the matter. It is also clear that in the case of a plaintiff, and the applicant should be treated as a plaintiff in the present circumstances, who is out of the jurisdiction and who has no property or assets in the country, that the discretion seems to be invariably exercised in favour of making an order for security for costs.

In my view as the applicant is out of the jurisdiction and in view of the past history of the litigation, the court should require the applicant to give security for costs. Previously security in the sum of $1,000 was ordered and that is the figure that I would now fix. The proceedings should be stayed until the order is complied with. The respondent should have his costs, agreed at $250.

Order accordingly.

Solicitors:—*Braddell & Ramani; Donaldson & Burkinshaw.*

HAJI AWANG v. IBRAHIM & ORS.

[A.C.J. (Suffian J.) June 29, 1963]

[Alor Star — Kedah Civil Appeal No. 15 of 1962]

Padi Cultivators (Control of Rent and Security of Tenure) Ordinance, 1955, ss.7, 11, 16—Padi Committee making order for possession against proprietor—Person in possession not party to proceedings—Proprietor convicted under s.16—Respondents applying to Sessions Court for possession—Whether abuse of process of Court.

The appellant was the registered proprietor of the bendang land in question and the respondents were his tenants. A dispute between the parties was brought before a Padi Committee constituted under the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance 1955 and the Committee ordered that the respondents should give up possession of the bendang land on condition that the appellant work it himself for three years. Subsequently as the appellant did not work the bendang land himself the Committee ordered that the respondents be restored into possession of the land. The respondents were unable to obtain possession of the land despite the order of the Committee because one M.S. who worked the land was in possession. The appellant was then duly charged and convicted under section 16(2) of the said Ordinance but the respondents still could not obtain possession. The respondents then commenced proceedings in the Sessions Court praying *inter alia* for an order that the appellant deliver and surrender the land to them. The learned President granted the order and the appellant appealed.

Held: (1) the respondents can in addition to invoking the provisions of section 16(2) of the said Ordinance apply to the Committee for a further order to give effect to its previous orders. The Committee has power to revise its order under section 7(2) and make an order addressed jointly to the appellant and M.S. restoring the respondents into possession;

(2) the civil action brought in the Sessions Court to enforce the Committee's order was an abuse of the process of that court. The learned President should have dismissed the action leaving the respondents to return to the Committee for further orders.

CIVIL APPEAL.

A. Jayadeva for the appellant.

Cur. Adv. Vult.

Suffian J.: This appeal turns on the question whether a Padi Committee constituted under section 6 of the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance No. 9 of 1955 can do anything to enforce their own order.

The facts are as follows. The defendant, the appellant here, is the registered proprietor of the bendang land in question. The three plaintiffs, the respondents here, were his tenants. There was a dispute between them as regards the tenancy. The dispute was brought in cases Nos. 27, 28 and 29 of 1960 before the Padi Committee.

The Committee ordered that the three plaintiffs should give up possession of the bendang land to the defendant on condition that the defendant work it himself for three years. The Committee had power to so order because the defendant desired to cultivate the land himself, paragraph (e) of section 11, but they failed to make the defendant execute a bond as required by the first proviso to that paragraph.

Subsequently the plaintiffs brought the defendant back before the Committee in case No. 100 of 1961. The Committee found that the bendang was being worked not by the defendant himself, but by another person named Mat Saman. On the 20th July 1961 the Committee ordered that the plaintiffs be restored into possession of the bendang. The Committee had power to make this order under the second proviso to paragraph (e) of section 11, but the order was made against the defendant alone and not

against him and Mat Saman who had not been made a party.

The plaintiffs were unable to obtain possession despite this order.

Failure by the defendant to comply with the Committee's order is a criminal offence under section 16(2) and he was accordingly prosecuted in Alor Star Private Summons Case PR. 134/60; he pleaded guilty, was convicted and fined $100 or 45 days.

Still the plaintiffs could not obtain possession from the defendant.

On 7th September 1961 the plaintiffs, presumably under the impression that the Committee were powerless to compel obedience to their own order, brought Civil Action No. 79 of 1961 in the Alor Star Sessions Court against the defendant praying for an order

(1) that the defendant deliver and surrender to them the bendang as soon as possible;

(2) that the defendant be restrained from interfering with and trespassing into this land;

(3) costs; and

(4) for other order as the court may grant to enable the three respondents to cultivate padi during the 1961 season.

The learned President of the Sessions Court granted the plaintiffs an order in terms of prayers (1) and (3). It is against this order that this appeal has been brought. The defendant appeals on three grounds:—

(i) that the learned President erred in law in entertaining the civil action on the ground that the matter was within the jurisdiction of the Padi Committee which had fully adjudicated on it;

(ii) the learned President erred in not taking into consideration that the order sought by the plaintiffs was a futile order because the land being in possession of some one else namely Mat Saman it was impossible for the defendant to comply with it;

(iii) the order made by the Padi Committee in case No. 100/60 was defective in that it ordered the defendant who is not in possession of the bendang to deliver possession to the plaintiffs.

Having considered this matter, I have come to the conclusion that this appeal should be allowed.

The Padi Committee, having made an order restoring the plaintiffs into possession, had power to enforce that order by virtue of section 7(1)(c) which reads—

"A Committee shall have and may exercise the following powers:

xx xx xx

to make such orders as may be necessary to give effect to the determination of any application or dispute."

When the defendant failed to comply with the Padi Committee's order the plaintiffs could invoke the criminal sanctions provided for by sub-section (2) of section 16. That was done. But the plaintiffs can in addition also complain to the Committee and apply for a further order to give effect to their orders. But if subsequent to this appeal they wish to go back to the Committee for such further order they would be well advised to apply to the Committee at the same time to have Mat Saman, the person who was found to be in possession of the bendang, made a party jointly with the defendant. The Committee may then in my view order that Mat Saman be made a party jointly with the defendant and, if the facts elicited at the further enquiry justify them doing so, make an order addressed jointly to the defendant and Mat Saman restoring the plaintiffs into possession. In my opinion the Committee have power to revise their order to the above effect by virtue of sub-section (2) of section 7. If after Mat Saman has been joined and an order has been made against both him and the defendant that the plaintiffs be restored into possession, they still refuse to comply, then, in my opinion, the Committee may order their servants to forcibly eject them and if the defendant and Mat Saman thwart them, they lay themselves open to a prosecution under sections 183 and 186 of the Penal Code, for the acts of those servants are the acts of the Committee and by sub-section (4) of section 6 of the Ordinance members of the Committee are public servants for the purposes of the Penal Code. I do not think that the failure of the Committee, when ordering in cases Nos. 27, 28 and 29 of 1960 that the plaintiffs be ejected in favour of the defendant, to comply with sub-paragraph (ii) of the first proviso to paragraph (e) of section 11 is fatal, because such failure only has the effect of disabling the Committee from ordering the defendant to forfeit his bond. In any event, if such failure was fatal, then the order in those three cases in favour of the defendant would also be fatal and the effect would be that the defendant had no valid order existing in his favour that he recover possession of his bendang.

Such being in my opinion the powers of the Committee, the civil action brought in the Sessions Court by the plaintiffs to enforce the Committee's order was an abuse of the process of that Court, it should not have been brought and when the defendant objected to it the learned President should have dismissed the action, leaving the plaintiffs to return to the Committee to ask them to make the necessary order which they have power to make, to enforce their order that the plaintiffs be restored into possession.

Under section 15 the Ruler in Council has

power to make Rules for the purpose of regulating the procedure of the Committee and some Rules have been made, *vide* Kedah Legal Notification 4/1955, but apparently no Rules have been made for regulating the modes in which orders of the Committee may be executed and it is this which has contributed to the plaintiffs' mistake in taking this matter to the Sessions Court. For the future it might be thought desirable to have such Rules made.

In conclusion, the learned President's order is set aside and for it there is substituted an order that the plaintiffs' claim be dismissed with costs here and in the court below. Deposit to be paid out to the appellant.

Claim dismissed.

Solicitors:—*Jayadeva & Zahir.*

HAJI JUNUS v. CHIK & ANOR.

[O.C.J. (Suffian J.) June 29, 1963]

[Alor Star—Kedah Civil Suit No. 106 of 1957]

Practice and Procedure—East Coast Rules, 1948, O.2 r.4—Application under—Preliminary objection—Declaration that plaintiff is owner of undivided half share —Allegations of fraud misrepresentation etc. in pleadings—Whether necessary to comply with exact wording of s.43 of Kedah Land Enactment No. 55.

Kedah Land Enactment No.55 s.43.

The deceased was the registered proprietor of the land in question. His widow, the second defendant, became the administratrix of his estate in 1928. The widow as administratrix entered into two separate agreements with the plaintiff for the sale of a half undivided share in the land for $400 and handed over possession to the plaintiff (who has been in occupation since) with an undertaking on her part to complete the transfer of the half undivided share to the plaintiff as soon as an order of the Court had been obtained. After several requests the plaintiff commenced proceedings and obtained judgment against her on May 16, 1957 with which she did not comply. The plaintiff then discovered on enquiring that on February 8, 1956 the first defendant had become the registered proprietor of 34/48th share in this land — as to 13/48th as a beneficiary and as to 21/48th as a purchaser from the Baitulmal — and that on the same day the administratrix, one R and one S the co-owners of the land had transferred all the land to the first defendant for $6,000. The plaintiff now claimed that he be declared owner of the half undivided share in the land and that the first defendant do transfer to him this half share failing which the Assistant Registrar of this court should be empowered to do so.

The first defendant raised two preliminary objections — (a) that the plaintiff had not employed the precise words used by section 43 of the Kedah Land Enactment to bring his case within that section and (b) that the plaintiff's suit against the first defendant was misconceived, and that the plaintiff's only remedy was to have the damages suffered by him assessed by the Assistant Registrar in compliance with the judgment.

Held: (1) the pleadings in this case complied with Order 2 rule 4 of the East Coast Rules. It is not necessary for the plaintiff to use the words "fraud or misrepresentation or forgery or insufficient or void instrument" in his statement of claim;

(2) the earlier civil suit did not in any way impinge upon the judgment because here what was sought was a declaration that the plaintiff was the owner of a half undivided share in the land and that the first defendant be ordered to transfer to the plaintiff his half share. The plea of *res judicata* could not avail against the first defendant because he was not a party to the earlier judgment.

Observations on interpretation of East Coast Rules.

Cases referred to:—

(1) *Lever Brothers Ltd.* v. *Bell* [1931] 1 K.B. 557.

(2) *Shaw* v. *Shaw* [1954] 2 Q.B. 429.

RULING ON PRELIMINARY OBJECTIONS.

G. H. Goh for the plaintiff.

A. Jayadeva for the 1st defendant.

Cur. Adv. Vult.

Suffian J.: This is a ruling on two preliminary objections raised by Inche Jayadeva, counsel for the first defendant.

This suit was brought under the East Coast Rules (1948 Rule No. 2), Federal *Gazette* Notification No. 2011 of 1948 made applicable to Kedah from 1.8.52 by Legal Notification No. 354/52 dated 7th June 1952.

The plaintiff's case as revealed by the pleadings is as follows. Senawi, hereinafter referred to as the deceased, was the registered proprietor of the land in question and when he died the land formed part of his estate. His widow, the second defendant, became the administratrix of his estate in 1928. On two separate dates she as administratrix entered into two separate agreements with the plaintiff for the sale of a half undivided share in the land for $400, and handed over possession to the plaintiff, who has been in occupation without interruption ever since.

The second defendant undertook to complete the transfer of the half undivided share to the plaintiff as soon as Court permission had been obtained.

Despite several requests by the plaintiff the second defendant failed to carry out the terms of the agreements.

In 1954 the plaintiff sued her in this court in Civil Suit No. 113 of 1954 for specific performance of the agreements and on the 16th May, 1957 he obtained judgment against her.

The second defendant did not comply with this judgment. The plaintiff discovered on enquiry that on the 8th February 1956 the second defendant had become the registered proprietor of 34/48th share in this land, as to 13/48th as